

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2251 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAMSHEDJEE JEEJEEBHOY CHARITY FUND

Versus

JAHABUX FARAMROJ DASTOOR

Appearance:

MR PS CHARI for Petitioners

MR KV GADHIA for Respondent-Workman

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/11/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioners are challenging by this special civil application the order annexure 'A' passed by the Presiding Officer, Labour Court, Surat in Recovery Application No.1142/79 on 31st August, 1985.

3. The respondent-workman has filed an application

under section 33-C(2) of the Industrial Disputes Act, 1947 before the said authority for the recovery of Rs.26,040/-, the details of which are as under:

Rs.5760/- Amount claimed for the overtime work for
the period from 1950 to 1956

Rs.7320/- Amount claimed for the overtime work for
the period from 1957 to 1962, and

Rs.12960/- Amount claimed for the overtime work for
the period from 1962 to 1967.

The respondent-workman also claimed Rs.441/- towards the earned leave for three years and Rs.1785/- as an amount for gratuity. Under the impugned order, the Labour Court has ordered for the payment of Rs.18990/- for the overtime work of the respondent -workman and Rs.368/- for earned leave. The rest of the claim of the respondent-workman has been rejected.

4. It is not in dispute that the respondent-workman has left the services of the petitioners in the year 1969. The application under section 33-C(2) of the I.D. Act, 1947 has been filed by the respondent-workman in the year 1979. So the application itself has been filed after ten years of his leaving of the job of the petitioners. This delay of ten years in filing of the application by the respondent-workman is fatal to the maintainability of the same. Further the claim of the overtime has been made for the periods, 1950 to 1956, 1957 to 1962 and 1962 to 1967. So the delay in filing of the application for claim of the first period is of 29 to 23 years, for the second period 22 to 17 years and for the third period, 17 to 12 years. The delay in filing of this application is not explained at all and it is really shocking that the Labour Court has proceeded in the matter as if in the case which is filed by the workman, the relief has to be granted. This approach of the Labour Court is wholly arbitrary and unjustified. The Labour Court has not considered that it is a stale claim made by the respondent-workman and more so for the amount of overtime work. So the order of the Labour Court in view of this fact cannot be allowed to stand.

5. The proceedings under section 33-C(2) of the I.D. Act, 1947 are in the nature of execution and the computation of the amount as claimed could have been made only where the claim made by the workman has been adjudicated upon by the Labour Court or the Industrial Tribunal, as the case may be in the Reference or where

the same is recognised by the employer. The power of Labour Court under section 33-C(2) of the I.D. Act, 1947 does not extend to determination of dispute or entitlement on the basis of the claim if there is no prior adjudication or recognition of the same by the employer. In this case, there has been no adjudication of claim of the respondent-workman, the application filed by him under section 33-C(2) was not maintainable.

6. Taking into consideration the totality of the facts of this case, the award of the Labour court cannot be allowed to stand.

7. In the result, this petition is allowed and the award of the Labour Court, Surat, dated 31st August, 1985 passed in Recovery Application No.1142/79 is quashed and set aside. Rule made absolute.

zgs/-